IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.2084 OF 2002

Shri Suresh Sahadeo Yadav. ...Petitioner.
Vs.
The Chairman, Maharashtra Shikshan
Prasarak Mandal, Dombivli & Ors. ...Respondents.
....
Mr. N. R. Bubna for the Petitioner.
Mr. M. A. Solkar, AGP for Respondent No.3.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 10, 2005.

P.C.:

Notice has been issued in this matter to the Respondents, intimating to the First and Second Respondents that the matter would be heard and finally disposed of at the stage of an admission. The First and Second Respondents are absent though notice has been served.

2. The Petitioner has passed his SSC examination and has since qualified at the ITI and NCVT examinations. The First and Second Respondents appointed the Petitioner as a Moulding

Instructor with effect from 14th September 1996. No appointment order was, however, supplied to the Petitioner. The initial appointment was terminated on 25th March 1997. However, according to the Petitioner, his services were continued by the First and Second Respondents during the Academic Year 1997-98. On 8th October 1997, he was orally informed by the Headmaster that his services were no longer required and that he was accordingly terminated from the service. The case of the Petitioner was that he was appointed in a clear and permanent vacancy; that he belongs to a Scheduled Caste and that in any event, the order of termination, without holding an enquiry and without complying with due process of law, is unlawful. On these averments, the Petitioner moved the School Tribunal at Navi Mumbai in an appeal under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

3. The First and Second Respondents filed their Written Statement and their defence was that the Petitioner was appointed as a Moulding Instructor on a purely temporary basis,

for a period of one year, with effect from 14th September 1996. Their case was that on the expiration of the period of one year, the services of the Petitioner came to an end. There was, it was urged, no occasion for continuing him in service.

4. Before the School Tribunal the specific case of the Petitioner was that after the expiry of the initial period of one year, his services were continued during the course of the next Academic Year, namely, 1997-98. The case of the Petitioner was that during the aforesaid Academic Year, he had worked in the School, but his signatures were not taken on the muster and that he was required to sign on blank sheets. The Petitioner relied upon a letter dated 26th September 1997 by which he was authorised by the First and Second Respondents, as a Moulding Instructor, to collect 200 forms for the students who were to appear for the SSC Examination in March 1998. The Tribunal has declined to accept the case of the Petitioner based on the aforesaid letter dated 26th September 1997 of the First and Second Respondents. The only reason to hold thus is that according to

the Tribunal, the allegations of the Petitioner have not been supported by an independent witness from the school. There is in my view, merit in the submission of the Petitioner that the entire appreciation of evidence on the part of the Tribunal was perverse and warrants interference of this Court. Counsel appearing on behalf of the Petitioner submitted that in a case such as the present, where an allegation has been leveled against the Management of a private school, an independent witness from the school itself may not necessarily be available. However, once the Petitioner did produce documentary evidence consisting of a letter by the Management authorising him as a Moulding Instructor to collect 200 forms for SSC students in March 1998, it was for the Management to explain how in the face of its own letter, it could be contended that the Petitioner had not served in the school at all during the period 1997-98. The case of the Petitioner was that he was appointed in a clear and permanent vacancy and that in the circumstances, he was entitled to the benefit of the provisions of law contained in the aforesaid enactment. In the circumstances, I am of the view that it would be only appropriate and proper if the

Tribunal is directed to have a fresh look at the evidence in the light of the aforesaid observations and to pass an order afresh on the appeal on remand.

5. The impugned Judgment and Order of the School Tribunal dated 3rd December 2001 is, in the circumstances, quashed and set aside. Appeal No.240 of 1998 is restored to the file of the School Tribunal at Navi Mumbai. The Tribunal is directed to pass a fresh order on the appeal after furnishing to the Petitioner and the Respondents an opportunity of being heard. The Tribunal shall dispose of the appeal and endeavour to pass an order within three months from the date when an authenticated copy of the order is produced by either of the parties. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

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